Filed 7/22/19 P. v. Sicairos CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RAUL MENDOZA SICAIROS, Defendant and Appellant.	G056171 (Super. Ct. No. C-80761) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila F. Hanson , Judge. Reversed and remanded with directions.

Law Offices of Gita B. Kapur & Associates, Geoffrey M. Pogue and Hany Nicola, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina, Christine Levingston Bergman and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

In 2016, the Legislature created a new law, which became effective in January 2017, allowing a person who is no longer in custody to file a motion to vacate a conviction because: "The conviction or sentence is legally invalid due to a *prejudicial error* damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere." (Pen. Code, § 1473.7, subd. (a)(1), italics added.)[1]

Courts uniformly understood the "prejudicial error" requirement to mean that a person had to prove an ineffective assistance of counsel (IAC) claim. (*Strickland v. Washington* (1984) 466 U.S. 668.) But effective January 2019, the Legislature clarified: "A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel." (§ 1473.7, subd. (a)(1), as amended by Stats. 2018, ch. 525, § 2.)

In 1990, defendant Raul Mendoza Sicairos pleaded guilty to possessing cocaine for the purposes of sales; he is now facing adverse immigration consequences (mandatory deportation). In 2017, Sicairos filed a section 1473.7 motion; the trial court denied the motion, finding Sicairos did not prove an IAC claim. In 2018, Sicairos filed a timely appeal. The Attorney General concedes the 2019 amendment is retroactive.

Consistent with this court's recent published opinion in *People v. Mejia* (June 26, 2019, G056042) __ Cal.App.5th __ [2019 WL 2608944] (*Mejia*): "We hold that to establish a 'prejudicial error' under section 1473.7, a person need only show by a preponderance of the evidence: 1) he did not 'meaningfully understand' or 'knowingly accept' the actual or potential adverse immigration consequences of the plea; and 2) had he understood the consequences, it is reasonably probable he would have instead attempted to 'defend against' the charges."

We find that Sicairos made such a showing. Thus, we reverse. On remand, we direct the trial court to allow Sicairos to withdraw his 1990 guilty plea.

---

[1] Further undesignated statutory references will be to the Penal Code.

I

FACTS AND PROCEDURAL HISTORY

On July 5, 1990, the prosecution filed a felony complaint alleging that Sicairos had possessed cocaine base for purposes of sales. (Health & Saf. Code, § 11351.) About a month later, Sicairos pleaded guilty. Sicairos initialed an immigration advisement on the plea form: "I understand that if I am not a citizen of the United States the conviction for the offense charged may have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." The prosecution did not sign the plea form (indicating a "straight up" plea to the court). The court granted probation with various conditions, including a 90-day jail sentence.

In 2010, Sicairos obtained lawful permanent resident status, but it was later revoked due to his 1990 guilty plea. Thereafter, Sicairos moved to withdraw his guilty plea on the basis that the court did not properly advise him of the immigration consequences. (§ 1016.5.) The trial court denied the motion and this court denied a petition for writ of mandate challenging the trial court's ruling. (*People v. Sicairos* (Apr. 16, 2013, G046587) [nonpub. opn.].)

The Section 1473.3 Motion

On August 31, 2017, Sicairos filed a section 1473.7 motion to vacate his 1990 drug conviction. Sicairos attached a declaration to his motion. Sicairos stated, "I was born in Mexico on August 13, 1965. I entered the United States in 1980. I fled Mexico at the age of fourteen to escape an abusive home where I had been forced to work since the age of seven."

Sicairos continued: "Prior to entering my guilty plea, I was never informed by my attorney that my conviction would make me inadmissible to the United States and ultimately lead to my deportation. If I would have been informed of this, I would have

made further inquiry to my attorney, and I would have sought an alternative plea or I would have preferred to take my case to trial. In fact, I remember my attorney telling me the plea offer was good because if I took my case to trial then it would take a long time and I would end up being convicted and sentenced to three or four years in prison."

Sicairos stated: "When my attorney told me about the plea agreement being offered by the prosecutor, I told him that I wanted to apply for amnesty and I asked him if having this conviction on my record would prevent me from being able to do so. The only thing that my attorney told me was that, for immigration purposes, there is no difference between a conviction for simple possession and possession for sales, and that as long as I stayed out of trouble during the three years that I would be on probation, then I wouldn't have any problem."

Sicairos said that he was granted lawful permanent resident status in 2010, but "I learned less than one year later that the decision to grant residency had been rescinded due to my conviction." Sicairos stated, "I would not have entered the plea that I did in 1990 if I knew that I would be faced with this predicament twenty-seven years later." Sicairos said, "If this conviction is not vacated, my wife, children, grandchildren, and I will suffer an insurmountable amount of emotional and financial hardship. My family is my life, and we would miss each other terribly if we were to be separated. It would be immensely difficult for my family and I if we no longer saw each other in the United States like we do now."

Sicairos attached a declaration from Paul DeQuattro, the attorney who represented him at the time of the guilty plea. DeQuattro stated that, "I have no present recollection of Mr. Sicairos, what transpired in his case or on the date he changed his plea." DeQuattro averred: "As pertaining to immigration consequences as a result of a felony drug conviction, my practice in 1990 was to assess whether the charges were among those I believed were charges that immigration consequences would likely flow from a conviction. I believed that Health and Safety Code sections 11350 and 11351

were among those charges that immigration consequences would likely flow." DeQuattro stated: "My practice in 1990 was not to research or investigate further the actual immigration consequences of any particular case."

The Hearing on the Motion

On January 19, 2018, the section 1473.7 motion came before the trial court. After hearing argument for the prosecution and Sicairos' counsel, the court said that it would "take this matter under submission, and I will rule by written order."

On February 13, 2018, the trial court filed a 11-page order, denying the section 1473.7 motion. At the outset, the court stated that it was analyzing Sicairos' claim "based on ineffective assistance of counsel. The question then becomes whether he has established such a claim by a preponderance of the evidence." After analyzing Sicairos' section 1473.7 motion under well-established IAC standards (*Strickland*), the court concluded that it was "not convinced [Sicairos] would have risked a substantially longer time in custody, away from his family and unable to provide support for them, had he been *more fully advised* of the potential immigration consequences of his plea." (Italics added.)

The Instant Appeal

In 2018, Sicairos appealed. Effective in 2019, while the matter was pending in this court, the Legislature amended the statute: "A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel." (§ 1473.7, subd. (a)(1).) We invited the parties to file supplemental briefs. Both parties agree the Legislature's amendment is a clarification of existing law and therefore applies to nonfinal judgments, including this appeal. (See *Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922 ["A statute that merely clarifies, rather than changes, existing law is properly applied to transactions predating its enactment"].)

II

DISCUSSION

The focus of section 1473.7 is from the perspective of the defendant and what he understood—or didn't understand—at the time the plea was taken, and not whether his attorney provided IAC. Sicairos argues that he made a showing at the trial court that he did not "meaningfully understand, defend against, or knowingly accept the adverse immigration consequences of his plea." We agree.

This issue is one of statutory interpretation, which is a question of law; our review is de novo. (*John v. Superior Court* (2016) 63 Cal.4th 91, 95-96.) Our goal is to determine Legislature's intent. (*People v. Jefferson* (1999) 21 Cal.4th 86, 94.) We first look to the statute, giving the individual words "their 'usual and ordinary meanings.'" (*People v. Lawrence* (2000) 24 Cal.4th 219, 230-231.) "We do not, however, consider the statutory language 'in isolation.'" (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) "We must harmonize 'the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.'" (*Ibid.*)

The legal issues in this case and *Mejia, supra*, __ Cal.App.5th __ [2019 WL 2608944], are substantially identical. Thus, we will be quoting extensively from *Mejia.*

"A. Background and Context

"The current rules and procedures regarding noncitizens—and their respective rights within the criminal justice system—are based on decades of changes and advancements within the legislative, executive, and judicial branches of government, at both the state and federal levels. Before interpreting and applying section 1473.7, it is helpful to briefly review some of those changes and advancements.

"*1. Before Padilla*[2]

"In 1969, the California Supreme Court 'recognized that a substantial portion—probably the vast majority—of criminal cases are disposed of through the process of plea bargaining.' (*In re Tahl* (1969) 1 Cal.3d 122, 138-139 (conc. & dis. opn. of Peters, J.).) As such, courts have developed procedural protections for defendants who plead guilty.[3] For instance, these procedures require a knowing, intelligent, and express waiver of a defendant's constitutional rights. (*Ibid*., citing *Boykin v. Alabama* (1969) 395 U.S. 238.) Defendants must also be informed of the direct consequences of their guilty pleas. (*Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605.) However, for many years the immigration ramifications for noncitizen defendants were considered indirect or collateral consequences of a guilty plea. (See *People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 198.)

"Effective in 1977, the [California] Legislature required courts to provide additional protections for noncitizen defendants: 'Prior to acceptance of a plea of guilty . . . to any offense punishable as a crime under state law . . . the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.' (§ 1016.5, subd. (a).)

"A defense attorney's 'affirmative misrepresentation' about immigration consequences could, in some cases, constitute ineffective assistance. (*In re Resendiz* (2001) 25 Cal.4th 230, 247.) However, unless there was an inquiry by a defendant, counsel could generally rely on the court's immigration advisement. (*People v. Quesada*

---

[2] "*Padilla v. Kentucky* (2010) 559 U.S. 356 (*Padilla*)."

[3] "We will be referring to guilty pleas throughout this opinion, but the same principles apply to pleas of nolo contendere (no contest)."

(1991) 230 Cal.App.3d 525, 535-536.) That is, unless counsel gave patently inaccurate advice (misadvice), the failure to discuss immigration consequences did not support an IAC claim because counsel's performance did not fall below an objectively reasonable standard. (*Strickland*, *supra*, 466 U.S. at pp. 691-692.)

"*2. Padilla and Subsequent Advancements*

"In 2010, the United States Supreme Court recognized that: 'The landscape of federal immigration law has changed dramatically over the last 90 years. While once there was only a narrow class of deportable offenses . . . , immigration reforms over time have expanded the class of deportable offenses . . . . The "drastic measure" of deportation or removal . . . is now virtually inevitable for a vast number of noncitizens convicted of crimes.' (*Padilla*, *supra*, 559 U.S. at p. 360.) The Court rejected the former 'affirmative misadvice' test for IAC, holding that defense attorneys have an obligation to understand and accurately explain the immigration consequences of a guilty plea: 'Our longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less.' (*Id.* at p. 374.)

"Effective January 1, 2016, the California Legislature enacted two new Penal Code sections, which codified and expanded the protections for noncitizen criminal defendants. (§§ 1016.2, 1016.3.) In section 1016.2, subdivision (c), the Legislature noted that: 'In [*Padilla*], the United States Supreme Court found that for noncitizens, deportation is an integral part of the penalty imposed for criminal convictions. Deportation may result from serious offenses or a single minor offense. It may be by far the most serious penalty flowing from the conviction.'

"'Defendants who are misadvised or not advised at all of the immigration consequences of criminal charges often suffer irreparable damage to their current or potential lawful immigration status, resulting in penalties such as mandatory detention,

deportation, and permanent separation from close family. In some cases, these consequences could have been avoided had counsel provided informed advice and attempted to defend against such consequences.' (§ 1016.2, subd. (e).) 'Once in removal proceedings, a noncitizen may be transferred to any of over 200 immigration detention facilities across the country. Many criminal offenses trigger mandatory detention, so that the person may not request bond. In immigration proceedings, there is no court-appointed right to counsel and as a result, the majority of detained immigrants go unrepresented. Immigration judges often lack the power to consider whether the person should remain in the United States in light of equitable factors such as serious hardship to United States citizen family members, length of time living in the United States, or rehabilitation.' (§ 1016.2, subd. (f).)

"'The immigration consequences of criminal convictions have a particularly strong impact in California. One out of every four persons living in the state is foreign-born. One out of every two children lives in a household headed by at least one foreign-born person. The majority of these children are United States citizens. It is estimated that 50,000 parents of California United States citizen children were deported in a little over two years.[4] Once a person is deported, especially after a criminal conviction, it is extremely unlikely that he or she ever is permitted to return.' (§ 1016.2, subd. (g).) 'It is the intent of the Legislature to codify [*Padilla*] and related California case law *and to encourage the growth of such case law in furtherance of justice and the findings and declarations of this section*.' (§ 1016.2, subd. (h), italics added.)

"'Defense counsel shall provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the defendant, and consistent with professional standards, defend against those consequences.' (§ 1016.3, subd. (a).) 'The prosecution,

[4] Sicairos and his wife have three children and three grandchildren that were born in the United States.

in the interests of justice, and in furtherance of . . . Section 1016.2, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.' (§ 1016.3, subd. (b).)

"B. Section 1473.7

"Effective January 1, 2017, the Legislature further expanded the protections for noncitizen criminal defendants. The new statute provided, in relevant part: 'A person no longer imprisoned . . . may prosecute a motion to vacate a conviction . . . : [¶] (1) . . . [that] is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty . . . .' (§ 1473.7, subd. (a)(1).) Section 1473.7, subdivision (e)(1), which remains unchanged, provides: '*The court shall grant the motion* to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the grounds for relief specified in subdivision (a).' (Italics added.)

"After its enactment, California courts uniformly interpreted section 1473.7 under the existing and long-standing rules for constitutional IAC claims. (See, e.g., *People v. Espinoza* (2018) 27 Cal.App.5th 908, 917-918 [defendant met his burden under section 1473.7 by establishing both *Strickland* prongs]; *People v. Tapia* (2018) 26 Cal.App.5th 942, 955 ['Having failed to establish either prong—deficient performance or prejudice—Tapia has not proven ineffective assistance']; *People v. Olvera* (2018) 24 Cal.App.5th 1112, 1118 ['Because Olvera has not established that his counsel rendered deficient performance, he is not entitled to relief'].)

"Effective January 1, 2019, the Legislature amended section 1473.7, subdivision (a), to add: '(1) . . . A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.' In amending the statute, the Legislature noted 'that a finding based on prejudicial error may, but need not, include a finding of

ineffective assistance of counsel and that the *only finding that the court is required to make* . . . is whether the conviction is legally invalid due to prejudicial error *damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept* the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.' (Legis. Counsel's Dig., Assem. Bill No. 2867 (2017-2018 Reg. Sess.), italics added.) The Legislature's declared intent was 'to provide clarification to the courts regarding Section 1473.7 of the Penal Code to ensure uniformity throughout the state and efficiency in the statute's implementation.' (*Ibid*.)" (*Mejia, supra*, __ Cal.App.5th __ [2019 WL 2608944].)

In *People v. Camacho* (2019) 32 Cal.App.5th 998, 1001-1002 (*Camacho*), "defendant pleaded no contest in 2009 to a charge of possessing marijuana for sales. [Citation.] In 2017, defendant moved to vacate the conviction. Defendant stated his attorney 'never discussed immigration issues or any settlement offers, nor was he instructed to consult with an immigration attorney. [¶] . . . Defendant's attorney never told defendant of the consequences of [the] a plea . . . . Counsel did not tell defendant that he could take the case to trial or discuss the possible outcome. Defendant declared: "I would have never taken the plea . . . if I would have known that it would have not permitted me to obtain legal status . . . . I have two United States citizen children and my wife is a United States citizen. I cannot leave them here in the United States without being [there] to support them."' (*Id.* at p. 1001.) The trial court denied the motion, finding that counsel's representation 'did not fall below the standards of what was reasonably expected . . . at the time.' Further, the trial 'court noted defendant's concern was not getting jail time, and found no facts indicating prejudice.' (*Id*. at p. 1004.)

"The Second District Court of Appeal disagreed. The court 'remanded to the superior court with instructions to grant the motion and to vacate the conviction.' (*Camacho, supra*, 32 Cal.App.5th at p. 1012.) The court held that the amended statute did not require a finding of an error by defendant's counsel. Rather, the court held that

the law required an error on the part of the defendant. The court also concluded that the record established such an error. That is, the record in *Camacho* established '*defendant's own error* in . . . not knowing that his plea would subject him to mandatory deportation and permanent exclusion from the United States.' (*Id*. at p. 1009, italics added.)

"As far as prejudice, *Camacho* held: 'Because the errors need not amount to a claim of ineffective assistance of counsel, it follows that courts are not limited to the *Strickland* test of prejudice, . . . [a] reasonable probability of a different outcome in the original proceedings absent the error.' (*Camacho*, *supra*, 32 Cal.App.5th at p. 1009.) Rather, the court found that a 'defendant may show prejudice by "convinc[ing] the court [that he] would have chosen to lose the benefits of the plea bargain despite the possibility of or probability deportation would nonetheless follow."' (*Id*. at p. 1010.) The court relied, in part, on the Supreme Court's recent holding in *Lee v. United States* (2017) __ U.S. __ [137 S.Ct. 1958, 1967] (*Lee*) [a noncitizen defendant demonstrated a 'reasonable probability' that he 'would have rejected any plea leading to deportation—even if it shaved off prison time—in favor of throwing a "Hail Mary" at trial'].)

"The *Camacho* court found 'compelling' evidence of prejudice in the record from the trial court. Defendant 'was brought to the United States over 30 years ago . . . . Defendant is, and at the time of his plea was, married to a United States citizen with an American citizen son, and now also an American citizen daughter. At the time of his plea, defendant was employed . . . and now works as a tow truck driver. Defendant has no other adult criminal convictions.' (*Camacho*, *supra*, 32 Cal.App.5th at p. 1011.) The *Camacho* court concluded that 'defendant showed by a preponderance of evidence that he would never have entered the plea if he had known that it would render him deportable, the errors which damaged his ability to meaningfully understand, defend against, or knowingly accept the adverse immigration consequences of a plea were prejudicial. The [superior] court was thus required to grant the motion to vacate the conviction as invalid.' (*Id*. at pp. 1011-1012.)

"C. Analysis and Application

"We agree with the Second District Court of Appeal's analysis in *Camacho, supra,* 32 Cal.App.5th 998. Under the plain language of section 1473.7 as amended, it is apparent that a defendant is no longer required to prove an IAC claim in order to have his or her convictions vacated and declared legally invalid: 'A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.' (§ 1473.7, subd. (a)(1).) Rather, a superior court is required to make a finding of legal invalidity if the defendant proves by a preponderance of the evidence a 'prejudicial error damaging the moving party's ability to *meaningfully understand,* defend against, or *knowingly accept* the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.' (§ 1473.7, subd. (a)(1), italics added.)

"While codifying the United States Supreme Court's holding in *Padilla, supra,* 559 U.S. 356, our Legislature also expressed an intent to 'encourage the growth of such case law in furtherance of justice . . . .' (§ 1016.2, subd. (h).) Consistent with that legislative intent, we agree with the *Camacho* court's [holding] that the focus of the inquiry in a section 1473.7 motion is on the '*defendant's own error* in . . . not knowing that his plea would subject him to mandatory deportation and permanent exclusion from the United States.' (See *Camacho, supra,* 32 Cal.App.5th at p. 1009, italics added.)

"We also agree with the *Camacho* court as to the prejudice component of the amended statute. That is, a 'prejudicial error' occurs under section 1473.7 when there is a *reasonable probability* that the person would not have pleaded guilty—and would have risked going to trial (even if only to figuratively throw a 'Hail Mary')—had the person known that the guilty plea would result in mandatory and dire immigration consequences. (See [*Lee*], *supra,* __ U.S. __ [137 S.Ct. at p. 1967] ['Lee has adequately demonstrated a reasonable probability that he would have rejected the plea had he known that it would lead to mandatory deportation'].)

"'Where a defendant has no plausible chance of an acquittal at trial, it is highly likely that he will accept a plea . . . . [¶] But common sense . . . recognizes that there is more to consider than simply the likelihood of success at trial. The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea. [Citation.] When those consequences are, from the defendant's perspective, similarly dire, even the smallest chance of success at trial may look attractive.' (*Lee*, *supra*, __ U.S. __ [137 S.Ct. at p. 1966].) In a postconviction setting, courts should not simply accept a defendant's statement of regret regarding the plea, courts should also 'look to contemporaneous evidence to substantiate a defendant's expressed preferences.' (*Id*. at p. __ [137 S.Ct. at p. 1967].)" (*Mejia, supra*, __ Cal.App.5th __ [2019 WL 2608944].)

Here, Sicairos stated in his motion to withdraw his guilty plea: "Prior to entering my guilty plea, I was never informed by my attorney that my conviction would make me inadmissible to the United States and ultimately lead to my deportation." In other words, Sicairos did not "meaningfully understand" or "knowingly accept" the mandatory deportation consequences when he pleaded guilty in 1990. (See § 1473.7, subd. (a)(1).) When ruling on the motion, the trial court made no express or implied credibility determinations on this point, as the denial was based solely on IAC principles. In short, Sicairos' declaration plainly established his own "error" within the meaning of section 1473.7, subdivision (a)(1).

As far as the prejudice factor, there is contemporaneous evidence to substantiate Sicairos' claim that he would not have pleaded guilty had he known about its mandatory immigration ramifications. Similar to *Camacho*, there is compelling evidence in the record that at the time of his guilty pleas, Sicairos had been in the United States for 10 years. Sicairos averred that he "fled Mexico at the age of fourteen to escape an abusive home where I had been forced to work since the age of seven."

Another contemporaneous substantiation of prejudice is that unlike most guilty pleas, this was a direct plea to the court rather than a negotiated disposition. The court granted Sicairos formal probation with a 90-day jail sentence. But had Sicairos gone to trial and been found guilty, it is simply not realistic to imagine that the court would have imposed the maximum prison sentence of four years. Sicairos apparently had no criminal record. It is much more likely that the court would have still granted Sicairos probation, but with more local custody time (up to a year in jail), or perhaps a lower term prison sentence. (See *In re Lewallen* (1979) 23 Cal.3d 274, 278-281 [under principles of due process, a trial court may not penalize a defendant for exercising his or her right to a jury trial, nor may it promise leniency if a defendant refrains from exercising that right].)

In short, if Sicairos had meaningfully understood the mandatory immigration consequences of his guilty pleas in 1990 (permanent deportation), versus the potential risks and rewards of going to trial, it is reasonably probable that he would have not pleaded guilty and would have instead taken his chances at trial. Thus, Sicairos has affirmatively established a "prejudicial error" within the meaning of section 1473.7, subdivision (a)(1).

The Attorney General apparently agrees that *Camacho*, *supra*, 32 Cal.App.5th 998, was correctly decided, but he argues that in this case, "the trial court properly rejected [Sicairos'] motion consistent with *Camacho* both on lack of error and prejudice grounds." We disagree. As far as the "lack of error" component, the trial court's analysis was wholly rooted in the long-standing IAC framework, which the Legislature has now rejected as unnecessary. And as far as the prejudice component, the Attorney General argues that Sicairos "faced a sentence in state prison but was sentenced to three years on probation. [Citation.] By his plea, [Sicairos] received a very favorable bargain whereby he avoided a state prison sentence had he been convicted and sentenced on the charged count." But Sicairos did not receive a "favorable bargain," Sicairos pleaded "straight up" to the court. Again, it is not realistic to expect that a judge would

have effectively penalized Sicairos for exercising his constitutional right to a jury trial. (See *In re Lewallen*, *supra*, 23 Cal.3d at pp. 278-281.)

In sum, we have taken into account section 1473.7 as amended, and have considered it within the broader context of the Legislature's implied and explicit intent regarding the treatment of noncitizen criminal defendants. Under that analytical framework, Sicairos plainly established a reasonable probability that he would not have pleaded guilty and likely would have taken his chances at trial had he meaningfully understood the certain and dire immigration consequences of his 1990 guilty plea.

III

DISPOSITION

The order is reversed and the matter is remanded to the trial court to allow Sicairos to withdraw his 1990 guilty plea.

MOORE, ACTING P. J.

WE CONCUR:

FYBEL, J.

GOETHALS, J.